

FEDERAL COMMUNICATIONS COMMISSION
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Market Disputes Resolution Division
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Re: *Flat Wireless, LLC v. Celco Partnership dba Verizon Wireless*, Proceeding Number 15-147, Bureau ID Number EB-15-MD-005

Dear Counsel:

During a telephonic status conference held on August 11, 2016, Flat Wireless, LLC (Flat) and Celco Partnership dba Verizon Wireless (Verizon) presented their positions concerning three disputed interrogatories that Flat served on Verizon. In this letter ruling, we decide those disputes.

Interrogatory No. 1 is denied. This interrogatory requests, among other things, details concerning Verizon's "agreements with international carriers which allow those carriers' customers to roam on VZW's network when in the United States."¹ Under the *T-Mobile Declaratory Ruling*, international roaming rates may be relevant in certain circumstances, but their probative value "as

¹ Amended Interrogatories of Flat Wireless, LLC, Proceeding Number 15-147, Bureau ID Number EB-15-MD-005 (Sept. 1, 2015) ("Flat Interrogatories"), at 4.

reference points will depend on the facts and circumstances of any particular case.”² Yet Flat has failed to articulate any reason why international roaming rates are particularly relevant in this case. Here, the parties are not seeking a roaming agreement that extends beyond the territorial United States. International roaming rates are different in kind from domestic rates since, for example, the incentives to domestic roaming partners having areas of overbuild are quite different from those in a partnership where no overbuild exists. Indeed, Flat mentions international rates only once in passing in its Complaint, and not at all in its Reply.³ Thus, Flat has not showed international rates to be of more than tenuous relevance to this entirely domestic roaming dispute.

By contrast, the burden on Verizon to provide this discovery would be significant. Verizon stated that it has agreements covering several hundred international networks, operating under widely variant legal regimes and encompassing terms that cannot simply be reduced to a chart showing price-per-unit of voice or data usage. Flat proposed no reasoned principle to reduce this burden on Verizon while still obtaining a meaningful sample of Verizon’s international rates. We therefore deny the interrogatory.

Flat’s Interrogatory No. 2 is denied. This interrogatory seeks rate and carrier information for each instance in which Verizon “has, in the last twelve months, offered to enter into a roaming agreement but an agreement on the offered terms is not in effect.”⁴ Neither the Voice Roaming Orders nor the Data Roaming Order identifies offered-but-unaccepted rates as potential guideposts in assessing reasonableness.⁵ Moreover, Flat failed to articulate a reason why such rates are nevertheless relevant in this particular case. Instead, Flat’s proposed rationale for the discovery would apply in absolutely any roaming dispute. Flat has therefore failed to explain why the requested information is “necessary to the resolution of the dispute,” and we deny Flat’s interrogatory.⁶

Flat’s Interrogatory No. 8, which requests “the number of roaming calls initiated on the Verizon network by Flat subscribers that failed to connect because of the non-implementation of the existing roaming agreement between Flat and Verizon,”⁷ is denied for failure to seek relevant information and as unduly burdensome. During the status conference, Flat’s counsel stated that the purpose of the discovery was to identify geographic areas in which Verizon is Flat’s only potential roaming partner. Yet counsel was unable to affirm that the information it seeks could disprove the availability of other potential roaming partners in those geographic areas. Thus, the discovery might

² *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 29 FCC Rcd 15483, at *4, *6, paras. 9, 17 (WTB 2014) (*T-Mobile Declaratory Ruling*).

³ See Complaint, Proceeding Number 15-147, Bureau ID Number EB-15-MD-005 (filed June 12, 2015) (Complaint) at ii; Flat Wireless, LLC’s Consolidated Answer to Affirmative Defenses and Reply to Answer, Proceeding Number 15-147, Bureau ID Number EB-15-MD-005 (filed Oct. 19, 2015) (Reply).

⁴ Flat Interrogatories at 4.

⁵ See *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers & Other Providers of Mobile Data Servs.*, Second Report and Order, 26 FCC Rcd 5411, 5443, para. 64 (2011) (*Data Roaming Order*); *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers & Other Providers of Mobile Data Servs.*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, 4200-01, para. 39 (2010) (*2010 Voice Order*); *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, para. 1 (2007) (*2007 Voice Order*). We refer to the *2007 Voice Order* and *2010 Voice Order*, collectively, as the “Voice Roaming Orders.”

⁶ See 47 C.F.R. §1.729(b).

⁷ Flat Interrogatories at 6.

be entirely irrelevant. Moreover, Verizon affirmed in a declaration supporting its objections to the interrogatory that “[t]he information sought in Interrogatory No. 8 is not available from business records maintained by Verizon in the ordinary course.”⁸ In particular, a Verizon engineering director affirmed under penalty of perjury that Verizon does not “compile records identifying roamers who have attempted to register on its network where Verizon does not have such roamer’s home carrier identifier loaded as a roaming partner on its systems.”⁹ We hold that it is unduly burdensome to require Verizon to provide this discovery that is not kept in the ordinary course of business. For both of these reasons, we deny the interrogatory.

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During the August 11 call, the parties also agreed to try to resolve their dispute concerning Flat’s Interrogatory No. 5. Once the parties inform us of their resolution concerning Interrogatory No. 5, if any, we will issue a scheduling order for the close of discovery and briefing in this case.

Finally, as stated during the call, Verizon’s answer to Flat’s amended complaint¹⁰ is due by September 20, 2016.

This letter ruling is issued pursuant to sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3, 20.12(e)(2), and 1.720-1.736 of the Commission’s rules, 47 C.F.R. §§ 1.3, 20.12(e)(2), 1.720-1.736, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311.

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⁸ See Verizon’s Objections and Response to Amended Interrogatory No. 8, Declaration of Miguel A. Carames, Proceeding Number 15-147, Bureau ID Number EB-15-MD-005 (Aug. 2, 2016).

⁹ See *id.*

¹⁰ See Amendment to Complaint, Proceeding Number 15-147, Bureau ID Number EB-15-MD-005 (Sept. 11, 2015).